

(b) Government personnel shall not disclose restrictively marked information (see 3.104 and 15.609) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

**15.609 Limited use of data.**

(a) An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

Use and Disclosure of Data

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of—or in connection with—the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [*insert numbers or other identification of sheets*].

(b) The offeror shall also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(c) The agency point of contact shall return to the offeror any unsolicited proposal marked with a legend different from that provided in paragraph (a) of this section. The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The agency point of contact shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no

restrictions are imposed on the disclosure or use of the data contained in the proposal:

Unsolicited Proposal—Use of Data Limited

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with FAR 3.104, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) The notice in paragraph (d) of this section is used solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, the use of this notice shall not be used to justify the withholding of a record, nor to improperly deny the public access to a record, where an obligation is imposed on an agency by the Freedom of Information Act, 5 U.S.C. 552, as amended. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or non-profit organization or institution, and an evaluation outside the Government is necessary, the agency point of contact shall—

(1) Attach a cover sheet clearly marked with the legend in paragraph (d) of this section;

(2) Change the beginning of this legend to read "All Government and non-Government personnel \* \* \* "; and

(3) Require any non-Government evaluator to agree in writing that data in the proposal will not be disclosed to others outside the Government.

(g) If the proposal is received with the restrictive legend (see paragraph (a) of this section), the modified cover

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sheet shall also be used and permission shall be obtained from the offeror before release of the proposal for evaluation by non-Government personnel.

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and evaluation by Government personnel outside the agency or by experts outside of the Government is necessary, written permission must be obtained from the offeror before release of the proposal for evaluation. The agency point of contact shall—

(1) Clearly mark the cover sheet with the legend in paragraph (d) or as modified in paragraph (f) of this section; and

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government.

EFFECTIVE DATE NOTE: At 62 FR 51230, Sept. 30, 1997, part 15 was revised, effective Oct. 10, 1997. For the convenience of the user, the text remaining in effect until Oct. 10, 1997 is set forth as follows:

### PART 15—CONTRACTING BY NEGOTIATION

Sec.

15.000 Scope of part.

#### Subpart 15.1—General Requirements for Negotiation

15.100 Scope of subpart.  
15.101 Definition.  
15.102 General.  
15.103 Converting from sealed bidding to negotiation procedures.  
15.104–15.105 [Reserved]  
15.106 Contract clauses.

#### Subparts 15.2–;15.3 [Reserved]

#### Subpart 15.4—Solicitation and Receipt of Proposals and Quotations

15.400 Scope of subpart.  
15.401 Applicability.  
15.402 General.  
15.403 Solicitation mailing lists.  
15.404 Presolicitation notices and conferences.  
15.405 Solicitations for information or planning purposes.  
15.405–1 General.  
15.405–2 Solicitation provision.  
15.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

15.406–1 Uniform contract format.  
15.406–2 Part I—The Schedule.  
15.406–3 Part II—Contract clauses.  
15.406–4 Part III—List of documents, exhibits, and other attachments.  
15.406–5 Part IV—Representations and instructions.  
15.407 Solicitation provisions.  
15.408 Issuing solicitations.  
15.409 Pre-proposal conferences.  
15.410 Amendment of solicitations before closing date.  
15.411 Receipt of proposals and quotations.  
15.412 Late proposals, modifications, and withdrawals of proposals.  
15.413 Disclosure and use of information before award.  
15.413–1 Alternate I.  
15.413–2 Alternate II.  
15.414 Forms.  
15.415 Economic purchase quantities (supplies).  
15.416 Simplified contract format.

#### Subpart 15.5—Unsolicited Proposals

15.500 Scope of subpart.  
15.501 Definitions.  
15.502 Policy.  
15.503 General.  
15.504 Advance guidance.  
15.505 Content of unsolicited proposals.  
15.506 Agency procedures.  
15.506–1 Receipt and initial review.  
15.506–2 Evaluation.  
15.507 Contracting methods.  
15.508 Prohibitions.  
15.509 Limited use of data.

#### Subpart 15.6—Source Selection

15.600 Scope of subpart.  
15.601 Definitions.  
15.602 Applicability.  
15.603 Purpose.  
15.604 Responsibilities.  
15.605 Evaluation factors and subfactors.  
15.606 Changes in Government requirements.  
15.607 Disclosure of mistakes before award.  
15.608 Proposal evaluation.  
15.609 Competitive range.  
15.610 Written or oral discussion.  
15.611 Best and final offers.  
15.612 Formal source selection.  
15.613 Alternative source selection procedures.

#### Subpart 15.7—Make-or-Buy Programs

15.700 Scope of subpart.  
15.701 Definitions.  
15.702 General.  
15.703 Acquisitions requiring make-or-buy programs.  
15.704 Items and work included.  
15.705 Solicitation requirements.